



Home Office

AUTHORITY: The Secretary of State for the Home Department

## **Schedule 1 – Definitions**

Secure English Language Testing Services

Trinity College London

## DOCUMENT LIST

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## Definitions

In this Concession Agreement the following words and phrases shall have the following meanings:

“**Action Plan**” has the meaning given in Clause 17.10.

“**Affected Party**” means the Party seeking relief in respect of a Force Majeure Event.

“**Affiliate**” means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under the direct or indirect common Control with that body corporate from time to time.

“**Annual Performance Report**” means the cumulative total of the monitoring statistics for the preceding Year and shall be received by the Authority within seven (7) days of the end of the final Month of the Year).

“**Assurance Report**” shall mean a report which demonstrates how the Concessionaire assures its data handling and management information process.

“**Audit**” means a Financial Audit or an Operational Audit conducted on behalf of the Authority.

“**Audit Records**” means the records of Audits conducted by the Concessionaire.

“**Auditor**” means the Authority or any other party (including the Concessionaire) authorised by the Authority to conduct Audits on its behalf as specified in Schedule 8.4 (Audits, Records and Assurance).

“**Authority Audit**” means Audits which are conducted by the Authority.

“**Authority Concession Manager**” means the person specified as such in Annex 8.1-1 (*Concession Managers and Boards*) to Schedule 8.1 (*Governance and Contract Management*).

“**Authority Confidential Information**” means all information (including all Personal Data), however it is conveyed that relates to:

- (a) the Authority;
- (b) the operations, affairs, developments, trade secrets, know-how and/or personnel of the Authority
- (c) the personnel of any other Crown Body with whom the Authority interacts or with whom the Concessionaire in pursuance of its obligations under this Agreement interacts;
- (d) the organisation, programmes and projects, services, policies or products of third parties or potential suppliers to the Authority;
- (e) all Intellectual Property Rights of the Crown;
- (f) all information derived from any of the above; and
- (g) any other information clearly designated as being confidential (whether or not it is marked confidential or with similar protective marking) or which ought reasonably be considered to be confidential, which comes (or has come) to the Concessionaire’s or a Sub-contractor’s attention or into the Concessionaire’s or a Sub-contractor’s possession pursuant to this Agreement;

**“Authority Contract Manager”** means the person appointed by the Authority to manage the ongoing contractual relationship between the Authority and the Concessionaire;

**“Authority Data”** means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:
  - (i) are supplied to the Concessionaire by or on behalf of the Authority; or
  - (ii) the Concessionaire is required to generate, process, store or transmit pursuant to this Concession Agreement;
- (b) any Personal Data for which the Authority is the Data Controller.

**“Authority Default”** means any breach by the Authority of this Concession Agreement (including but not limited to fundamental breach or breach of a fundamental term).

**“Authority Know How”** means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how owned by the Authority relating to its business.

**“Authority Licensed Materials”** means any materials such as marks, logos or wording which the Authority permits the Concessionaire to use to promote and describe the Chargeable Services to Candidates.

**“Authority Materials”** means any material in whatever form (including written, magnetic, electronic, graphic or digitised) including any methodologies, processes, know-how, reports, specifications, business rules or requirements, manuals, user guides, training materials and instructions, supporting material relating to software and/or its design, development, modification, operation, support or maintenance, but excluding software which belongs to or is furnished by the Authority.

**“Authority Policy”** means the guidelines and standards that govern the activities of the Authority.

**“Authority’s Property”** means any property, other than real property, which is issued or made available to the Concessionaire by the Authority in connection with this Concession Agreement.

**“Authority’s Representative”** means a representative of the Authority who is authorised to take decisions and/or to represent the Authority to the Concessionaire.

**“Authority’s Requirements”** means the requirements of the Authority in relation to the Secure English Language Testing Service, as set out in Schedule 2.1.

**“Authority Software”** means software belonging to or furnished by the Authority which is or will be used by the Concessionaire in the provision of the Services.

**“Background Intellectual Property Rights”** means any intellectual property rights which are owned, controlled or furnished by either Party, other than Foreground Intellectual Property Rights.

**“BCDR Event”** means any incident or event that causes (or is likely to cause) an adverse effect on the performance of the Chargeable Services, whether at a single Test Centre or at multiple Test Centres, which is material in nature and cannot be managed within the context

of normal operating procedures.

“**BCDR Plan**” means the plan developed and maintained by the Concessionaire in accordance with paragraph 2 of Schedule 8.5 (Disaster Recovery and Business Continuity Plan).

“**Biometrics**” means the distinctive, measurable characteristics used to label and describe individuals and, for the purpose of SELT, this will be fingerprints.

“**Board**” means a governance board, including, without limitation, the Concession Board.

“**Board Member**” means a member of a Board.

“**Breach of Security**” means any incident that affects the confidentiality, integrity or availability of the Concession Solution in accordance with paragraph 11.11 of Schedule 2.2 (Security).

“**Business Hours**” or “**Working Hours**” means the hours of the day during which a Test Centre is open in either Region for the purpose of taking tests (being the hours published on the web-site of the Concessionaire).

“**Cancelled Tests**” means a test that was either cancelled before it commenced, during the test or following the test if irregularities or issues were identified that prevented it being undertaken, continuing or being considered a valid test.

“**Candidate**” means a person who books, or has booked, to sit a Test at a Test Centre.

“**Candidate Data**” means any data which relates to a Candidate.

“**CASAT**” means Central Asia South Asia and Turkey UKVI Region.

“**CEDR**” means the Centre for Effective Dispute Resolution.

“**CEFR**” means the Common European Framework of Reference for Languages.

“**Change**” means any change to the Secure English Language Testing Service made or proposed by a Party in accordance with the Change Control Procedure.

“**Change Authorisation Note**” means the form used by the Concessionaire and the Authority to set out an agreed Contract Change and which shall be substantially in the form of Annex 8.2–3 to Schedule 8.2 (Change Control Procedure).

“**Change Communication**” means any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to Schedule 8.2 (Change Control Procedure).

“**Change Control Procedure**” means the procedure for dealing with proposed Changes as set out in Schedule 8.2 (Change Control Procedure).

“**Change in Law**” means any change in Law, which impacts on the Concession which comes into force after the Commencement Date.

“**Change of Ownership**” means the acquisition whether by purchase, transfer, renunciation or otherwise by a third party purchaser of any interest in shares in the capital of the

Concessionaire if, upon completion of that acquisition, the third party purchaser, together with the persons acting in concert or connected with him, would hold more than fifty per cent (50%) of the voting rights attached to the issued shares in the capital of the Concessionaire. For the purposes of this definition, the expressions “connected with” and “acting in concert with” shall have those respective meanings ascribed to them as set out in the City Code on Takeovers and Mergers.

“**Change Request**” means any written request by the Concessionaire or the Authority for a Change pursuant to Schedule 8.2 (Change Control Procedure).

“**Chargeable Services**” means those Secure English Language Testing Services which are delivered to Candidates and in respect of which such Candidates pay the Fee.

“**Claim**” means any claim, demand, proceeding or complaint of any kind.

“**Clause**” means a clause or sub-clause of this Concession Agreement.

“**Commencement Date**” means the date of the Concession Agreement.

“**Commercially Reasonable Efforts**” means taking such steps and performing them in such a way as a well-managed organisation would undertake with the aim of achieving a particular desired result for its own benefit, assuming such organisation was acting in a commercial, prudent and reasonable manner.

“**Compromised Data**” means data that has been compromised by either manual or computerised intervention.

“**Compromised Testing**” means any incident or occurrence that undermines the integrity of the any Test and/or the SELT examination process that could or will lead to inaccurate or wrongly awarded examination results. Examples of this could be instances of cheating; compromised security of systems; lost papers and/or any breaches of the **Authority’s Security Policy**.

“**Compromised Testing Notification**” means a notification which is in a standard form as specified by the Authority, which is used by the Concessionaire to notify the Authority of any incident of Compromised Testing.

“**Concession**” means the right of and obligation upon the Concessionaire to provide the Chargeable Services to Candidates from the Test Centres in accordance with this Concession Agreement.

“**Concession Agreement**” means the Clauses of this Concession Agreement together with the Schedules and Annexes to it and any documents referred to in it as being expressly incorporated in it.

“**Concession Board**” means the Board appointed by the Authority in accordance with paragraph 3 of Schedule 8.1 (Governance and Contract Management).

“**Concession Infrastructure**” has the meaning given in Clause 14.3.

“**Concession Year**” means the period of three hundred and sixty five (365) days (or three hundred and sixty six (366) days in the case of any year which includes 29 February) commencing on the PTO Commencement Date and each subsequent anniversary of the Commencement Date, provided that the final Concession Year shall commence on the last

anniversary of the Commencement Date that falls during the Term and shall end on the date of termination or expiry of this Concession Agreement.

**“Concessionaire Background IPRs”** means any Background IPRs of the Concessionaire.

**“Concessionaire Concession Manager”** means the person specified as such in Annex 8.1-1 (*Concession Managers and Boards*) to Schedule 8.1 (*Governance and Contract Management*).

**“Concessionaire Default”** means any breach by the Concessionaire of this Concession Agreement (including but not limited to a fundamental breach or breach of a fundamental term).

**“Concessionaire Equipment / Concessionaire Material”** means all plant, materials, consumables and goods, other than Authority’s Property, to be used by the Concessionaire in the SELT Service.

**“Concessionaire Performance Reports”** means all Management Information reports required by the Authority in accordance to the Concession.

**“Concessionaire Know How”** means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how owned by the Concessionaire and/or its Subcontractors relating to the business of the Concessionaire and/or its Subcontractors.

**“Concessionaire Licensed Materials”** means: any Concessionaire Materials, Project Material and or any Concessionaire Background IPRs.

**“Concessionaire Manager”** means the person appointed by the Concessionaire to manage the ongoing relationship and contractual matters between the Concessionaire and the Authority.

**“Concessionaire Personnel”** means all employees, agents, consultants and individual contractors of:

- (a) the Concessionaire
- (b) any Affiliate of the Concessionaire; or
- (c) any Subcontractor, who are wholly or mainly assigned to work on Concession.

**“Concessionaire Key Representative”** means in respect of Schedule 9.2 (Personnel and Key Representatives) any person(s), except Invigilators, nominated by the Concessionaire, to:- act on behalf of the Concessionaire at Contract Management Meetings;

**“Concessionaire’s Solution”** means the Concessionaire’s solution for the meeting the Authority’s Requirements as set out in Schedule 3.

**“Confidential Information”** means, as the context requires the Authority Confidential Information and/or the Concessionaire Confidential Information.

**“Contracting Authority”** means any UK Contracting Authority as defined in regulation 3(1) of the Public Contracts Regulations 2006.

**“Contractual Governance Procedures”** means the arrangements for the management of the Concession, including governing Board structures and change control process, as set out in Schedule 8.1 (Governance and Contract Management) and Schedule 8.2 (Change Control Procedure).

“**Control**” means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise).

“**Crown**” refers to Her Majesty’s government and includes (but is not limited to) any government department or agency and any secretary of state.

“**Crown Body**” means any department, office or agency of the Crown.

“**Cut-Off Date**” means:

- (a) in respect of UK Test Centres, 27<sup>th</sup> February 2015; and
- (b) in respect of ROW Test Centres, 16<sup>th</sup> April 2015.

“**Data Controller**” shall have the same meaning as set out in the Data Protection Act 1998.

“**Data Loss**” means data that is lost by either failures or neglect in storage, transmission or processing.

“**Data Processor**” shall have the same meaning as set out in the Data Protection Act 1998.

“**Data Protection Legislation**” means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Privacy and Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable legally binding guidance and codes of practice issued by the Information Commissioner.

“**Data Subject**” shall have the same meaning as set out in the Data Protection Act 1998.

“**Day**” means a period of 24 hours ending at 12 midnight.

“**Dedicated Concessionaire Personnel**” means all Concessionaire Personnel mainly or wholly engaged in the provision of the SELT Service or any part of the SELT Service.

“**Default**” means any breach of a legal obligation owed by one Party to the other including (but not limited to) any breach of this Concession Agreement and/or any breach of any common law duty of care by a Party.

“**Delay**” means a delay in:

- a) the design, development, assurance, testing and/or implementation of a Deliverable;
- b) the implementation of the delivery of any part of the SELT Service by the PTO Commencement Date; and
- c) the achievement of any Milestone by its associated Milestone Date.

“**Deliverable**” means an item, feature or service associated with the operation of the Concession which is required to be delivered by Concessionaire by a Milestone Date or at any other stage during the performance of this Concession Agreement.

“**Detailed Mobilisation Plan**” means the mobilisation plan set out the details as defined in Schedule 6.1 (Mobilisation and Permit to Operate) and revised from time to time.

**“Discrimination Legislation”** has the meaning given in Clause 30.1.

**“Dispute”** means any dispute, difference or question of interpretation arising out of or in connection with this Concession Agreement, including any dispute, difference or question of interpretation relating to the provision of the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Concession Agreement directs the Parties to resolve the issue by reference to the Dispute Resolution Procedure.

**“Dispute Resolution Procedure”** means the dispute resolution procedure set out in Schedule 8.3 (Dispute Resolution Procedure).

**“Documentation”** means:

- (a) all reports and papers, e-mails or letters provided by the Concessionaire to the Authority;
- (b) all descriptions of the Services and Service Levels and other documentation as:
  - (i) required to be supplied by the Concessionaire under this Concession Agreement; and
  - (ii) required by the Concessionaire in order to provide the SELT Service; or
- (c) documentation which has been or shall be generated for the purpose of providing the SELT Services or is incidental to the generation of the SELT Services.

**“Employment Liabilities”** means:

- (a) all Claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination on the grounds of religion or belief, sexual orientation or age, claims for equal pay, compensation for less favourable treatment of part-time workers; and
- (b) any Losses reasonably incurred in connection with any of the Claims identified in (a) above (including any investigation by the Equal Opportunities Commission, the Disability Rights Commission, or the Commission for Racial Equality or other enforcement, regulatory or supervisory body of implementing any requirements which may arise from such investigation).

**“Employment Requirements”** means the requirements as set out in Schedule 9.1 (Personnel Transfer).

**“ERA 1996”** means the Employment Rights Act 1996.

**“Escalation Process”** means the process for escalating Disputes set out in paragraph 2 of Schedule 8.3 (Dispute Resolution Procedure).

**“Euromed”** means Europe and the Mediterranean.

**“Examiner”** means any person responsible for assessing a Test or otherwise having an influence on the Candidate’s Test result.

**“Exit Period”** means the period of 3 Months prior to the expiry, termination or transfer of this Concession Agreement or such shorter period as circumstances may require.

**“Exit Provisions”** means those arrangements for winding-down of the SELT Service which shall apply on expiry or early termination of this Concession Agreement, as set out in Schedule 8.6 (Exit Management Plan).

**“Extension”** means an extension of the Term as permitted by Clause 3.2.

**“Expiry date”** means 24 months following the PTO Commencement Date, or, following any Extension, the last date of the period covered by the last such Extension.

**“Facet”** means in relation to a Test, one or more of: reading, listening, writing and/ speaking English.

**“Fee”** means the amount specified in Schedule 7.1 (Fees) which is payable by a Candidate in consideration of delivery by the Concessionaire of the Chargeable Services.

**“Financial Audit”** means a systematic review of the Concessionaire’s financial accounts.

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time and any guidance and/or codes of practice issued by the Information Commissioner and/or the relevant Crown Body in relation to such legislation.

**“Force Majeure Event”** means any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Concessionaire, any Subcontractor and/or the Concessionaire Personnel or any other failure in the Concessionaire or its Subcontractors’ supply chains.

**“Foreground Intellectual Property Rights”** means intellectual property rights generated by a Party in relation to the performance of the Concession Agreement.

**“Full Services Period”** means the period from PTO Commencement Date to the earlier of the Expiry Date or the termination of this Concession Agreement.

**“Good Industry Practice”** means the exercise of that degree of skill, care, diligence, prudence, foresight and judgement which would reasonably be expected from a skilled, experienced and market leading operator engaged in the provision of services similar to the Services.

**“HMG IA Standards”** means the current Information Assurance standards published by the CESG and/or UK Government Cabinet Office (<http://www.cesg.gov.uk/>).

**“HMG Security Policy Framework”** means the security policy framework issued by the Cabinet Office as such policy framework may be amended, varied, replaced and/or updated from time to time and, as at the date of this Concession Agreement, is published at <http://www.cabinetoffice.gov.uk/resource-library/security-policy-framework>.

**“Holding Company”** means a holding company as defined by section 736 and 736a of the Companies Act 1985 or section 1159 and Schedule 6 of the Companies Act 2006 as the case may be.

**“ICT”** means information and communications technology.

**“Identification Documents”** means documents which confirm a Candidate’s identity.

**“Impact Assessment”** means an assessment of a Change Request which shall be substantially in the form of Annex 8.2-2 to Schedule 8.2 (Change Control Procedure).

**“Independent Audit”** means an audit completed by a UK based independent third party

to assure the information provided in the Management Information.

**“Index of conditions”** means the index to this Concession Agreement in which the headings of the Clauses are listed.

**“Information”** has the meaning given to it under section 84 of the FOIA, but only in so far as the information in question relates to this Concession Agreement or its subject matter.

**“Information Request”** means a request addressed to the Authority, the Concessionaire, or both, for Information within the meaning of section 8 of the FOIA.

**“Initial Term”** means the period described in Clause 3.1.

**“Insolvency Event”** means the institution of bankruptcy proceedings in respect of the relevant person in any jurisdiction or the occurrence of any of the following events (or any equivalent or analogous procedure, process or event under the law of any jurisdiction in which the relevant person is incorporated or resident or carries on a material part of its business or has material assets) in relation to the relevant person:

- a) passing a resolution for its winding up or a court of competent jurisdiction making an order for the relevant person to be wound up or dissolved or the entity being otherwise dissolved;
- b) the appointment of a liquidator, an administrator or, the making of an administration order in relation to the relevant person or, the appointment of a receiver or an administrative receiver, or an encumbrancer taking possession of or selling the whole or part of the relevant person’s undertaking, assets, rights or revenue;
- c) entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or taking steps to obtain a moratorium or making an application to a court of competent jurisdiction for protection from its creditors;
- d) being unable or admitting its inability to pay its debts as they fall due or being capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (but with the phrase “it is proved to the satisfaction of the court that” removed from subsection 123(2) of the Insolvency Act 1986);
- e) suspending payments or commencing negotiations with one or more of its creditors with a view to entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors;
- f) enforcement of any security over any assets of the relevant person;
- g) any expropriation, attachment, sequestration, distress or execution affecting any asset of the relevant person which is not discharged within fourteen (14) days.

However, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event.

**“Intellectual property rights”** means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or not), applications for any of the above rights, copyright, database rights, domain, trade or business names, moral rights and any other similar rights or obligations whether registrable or not in any country (including but not limited to the united kingdom) and the right to sue for passing off.

**“Interlocutor”** means the examiner present in a speaking Test.

**“Invigilator”** means any person in the Test room responsible for conducting a particular Test session in the presence of the Candidates. Invigilators have a key role in upholding the

integrity of the SELT process.

**“Key Performance Indicators”** means the indicators of effective Service delivery as set out in Schedule 2.3 (Service Levels, Performance and Liquidated Damages).

**“Key Positions”** means Authority and Concessionaire roles which are key to managing the Concession as detailed Schedule 9.2 (Personnel and Key Representatives).

**“Law”** means any applicable law, statute, by-law, regulation, order regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

**“Leave to Remain “** is an immigration status granted to a person who does not hold the right of abode in the United Kingdom (UK), but who has been admitted to the UK for a fixed period of time to visit, work or study.

**“Legislative Requirement”** means any requirement set out in any act (including without limitation the Immigration and Asylum Act 1999 and the Human Rights Act 1998) or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978 and any exercise of the royal prerogative and any enforceable community right within the meaning of section 2 of the European Communities Act 1972 and in each such case includes the interpretation, administration or application thereof.

**“Licensed Marks”** means all and any Marks licensed by or through the Concessionaire, its Sub-contractors or any third party to any Authority for the purposes of or pursuant to this Concession Agreement.

**“Liquidated Damages”** means amounts which represent a genuine pre-estimate of the Authority’s loss in the event that certain specified events occur, as further described in Schedule 2.3 (Service Levels, Performance and Liquidated Damages).

**“Loss/Losses”** means all losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise other than losses of the type referred to in Clause 19.1.

**“Malicious Software”** means any software program or code designed or intended to infiltrate or damage a computer system without the owner’s consent, including:

- a) any software program or code intended to destroy, interfere with, corrupt or cause undesired effects on programme files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
- b) any software programme or code designed or intended to be a virus, worm, time or logic bomb, disabling code or routine, backdoor or similar; and/or
- c) any software program or code which would have the effect of disabling or shutting down any equipment, hardware, software, system, networks or other items;

**“Management Information”** means the management reports and other information relating to the SELT Service which are provided by the Concessionaire to the Authority, as described in Schedule 8.7 (Management Information).

“**Mark**” means any trade mark of which a Party is the registered proprietor.

“**MEP**” means Middle East and Pakistan UKVI Region.

“**Mediator**” means the independent third party appointed in accordance with paragraph 3 of Schedule 8.3 (Dispute Resolution Procedure).

“**Milestone**” means an event or task described as such in the Detailed Implementation Plan which, if applicable, must be completed by the relevant Milestone Date.

“**Mobilisation Leads**” means Authority’s staff and the Concessionaire Personnel responsible for managing and monitoring the Mobilisation Plan and mobilisation activities.

“**Mobilisation Period**” means the period between the Commencement Date and the PTO Commencement Date.

“**Mobilisation Plan**” means the Concessionaire’s plan for carrying out the Mobilisation Services which is set out at Schedule 6.1 (Mobilisation and Permit to Operate).

“**Mobilisation Services**” means the activities the Concessionaire must undertake during the Mobilisation Period to mobilise the SELT Service.

“**Month**” shall mean a calendar month.

“**Monthly Performance Report**” means the monthly report on performance, in a format set out by the Authority in Schedule 8.7 (Management Information) Annex 8.7-1, prepared by the Concessionaire in accordance with Schedule 2.3 (Service Levels, Performance and Liquidated Damages).

“**Mystery Shopper Event**” means an independent evaluation of the security and integrity of the SELT Service conducted from the perspective of a Candidate aiming to cheat.

“**Non-Working Hours**” means, in respect of a Test Centre, the hours of a day which are not Working Hours.

“**Notice of Dispute**” means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute.

“**Notifiable Event**” means any Change of Ownership or Control of:

- a) the Concessionaire; or
- b) any Holding Company of the Concessionaire.

“**Official Secrets Acts 1911-1989**” has the meaning given to it by section 16(2) of the official secrets act 1989.

“**Online Booking System**” means a system, operated and maintained by the Concessionaire that allows a Candidate to search for, source, book, pay for and receive confirmation of a Test.

“**Online Test**” means a Test taken on a computer or tablet that is accessed either as a programme or a web browser and “**Online Testing**” shall be construed accordingly.

“**Online Verification System**” means the online computer system used by the

Concessionaire and other SELT Providers to securely confirm authenticity of Test scores to the Authority.

**“Online Verification Manual”** means a guide for caseworkers on how to operate the Concessionaire’s online verification tool.

**“Operational Audit”** means an audit conducted by the Concessionaire, the Authority or a Third Party acting on behalf of either party to assess the tests, test processes, security and customer service of the Concessionaire. The audit may (without limitation) include:

- a) reviewing the Concessionaire’s compliance with its obligations under the Concession Agreement;
- b) carrying out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer Authority has used its resources; and/or
- c) verifying the accuracy and completeness of any reports delivered or required to be delivered under this Concession Agreement;
- d) quality assuring the robustness of the Concessionaire’s processes for delivering the Service.;
- e) reviewing the Concessionaire’s security arrangements.

**“Parent Company Guarantee”** means a Parent Company Guarantee provided by the Parent Company which is in substantially the same form as that set out in Schedule 7.2 (Form of Guarantee).

**“Partial Permit to Operate”** means the Concessionaire can apply to commence services where all UK Test Centres are ready but not all of the ROW Test Centre are ready.

**“Party”** means a party to this Concession Agreement and, in respect of each of the Authority and the Concessionaire, their respective successors and assigns and **“Party”** shall be construed accordingly.

**“Performance Monitoring”** means the process provided by the Concessionaire to monitor the performance of the Services in accordance with Schedule 2.3 (Service Levels, Performance and Liquidated Damages).

**“Performance Reports”** means all reports required by the Authority in accordance with Schedule 8.7 (Management Information).

**“Permanent Test Centre”** means a Test Centre which is operational all year round, in a fixed location.

**“Permit to Operate”** means the approval issued by the Authority indicating that mobilisation has been satisfactorily completed and that the Concessionaire is ready to commence provision of the Chargeable Services.

**“Permit to Operate Tests”** means a series of checks conducted by the Authority during the Mobilisation Period to establish that the Concessionaire is ready and able to deliver the SELT Service from the Planned PTO Commencement Date.

**“Personal Data”** shall have the same meaning given in the Data Protection Act 1998.

**“Personnel”** means people employed or engaged by the Concessionaire or the Authority.

**“Planned PTO Commencement Date”** means the planned Commencement Date for the

Permit to Operate (1<sup>st</sup> March 2015).

**“Pop-Up Service”** means the SELT Service provided by the Concessionaire from a Pop-Up Test Centre, which meets a limited demand in a particular area.

**“Pop-Up Test Centre”** means a Test Centre which operates for a fixed period, in a non-permanent location.

**“Prescribed Interest Rate”** means the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998.

**“Prevention of Corruption Acts 1889 to 1916”** has the meaning given to it in by section 4 of the Prevention of Corruption Acts 1916.

**“Process”** has the same meaning as given in the Data Protection Act 1998 but, for the purposes of this Concession Agreement shall include both manual and automatic processing.

**“Procurement Notice”** means the notice published in the Official Journal of the European Union in respect of Secure English Language Testing Services.

**“Project Material”** means any documentary Deliverable and any other material which is created by the Concessionaire or a Sub-contractor for the sole purpose of this Concession Agreement, but excluding the Concessionaire Marks.

**“Protectively Marked Information”** means any information which is classified in accordance with the Government’s Protective Marking Scheme as “Official”, “Secret” or “Top Secret”.

**“Proxy Test Taker”** means a person fraudulently undertaking a Test on behalf of the registered Candidate.

**“PTO Commencement Date”** means the agreed date where either full or partial service delivery will commence prior to the Cut-Off date.

**“Quarter”** means the first three months of the Term and each subsequent period of three months (or reduced period immediately prior to the end of the Term).

**“Records”** means those items specified in Annex 8.4-1 to Schedule 8.4 (Audits, Records and Assurance).

**“Region”** means the region(s) in which the Concessionaire provides the Secure English Language Testing Service, being one or both of the United Kingdom and the ROW.

**“Regulatory Bodies”** means those Government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Concession Agreement or any affairs of any Authority and **“Regulatory Body”** shall be construed accordingly.

**“Relevant Entity”** means: any Holding Company of the Concessionaire.

**“Remedial Plan”** means the plan referred to in the Remedial Plan Process.

**“Remedial Plan Process”** means the process set out in Clause 17.13.

**“Replacement Concessionaire”** means any third party supplier of Replacement Services appointed by the Authority from time to time.

**“Replacement Services”** means any services which are substantially similar to the SELT Service and which the Authority receives in substitution for any of the SELT Service following the termination of this Concession Agreement.

**“Rest of the World”** or **“ROW”** means countries other than any of the countries which make up the United Kingdom.

**“Satisfaction Surveys”** means a survey undertaken by the Authority directly with Candidates pursuant to Part D of Schedule 2.3 (Service Levels).

**“Secure Environment”** means a system or location for storage of electronic or other information which complies with the security requirements set out in Schedule 2.2 (Security).

**“Secure Storage”** means storage arrangements complying with Annex 2.2-1 to Schedule 2.2 (Security) - The Authority’s Security Policy for Safe Storage of Test papers.

**“Security and Anti-corruption Policy”** means a document setting out how the Concessionaire will deal with breaches of security and incidences of corruption, as agreed with the Authority.

**“Security Breach”** means any Service Failure that affects the confidentiality, integrity or availability of the SELT Service.

**“Secure English Language Testing Service”** or **“SELT Service”** means any and all services (including the Chargeable Services) which are performed by the Concessionaire under the terms of this Concession Agreement whether as part of the Mobilisation Services or during the Full Services Period, in meeting the Authority’s Requirements.

**“Secure English Language Testing System”** means the all equipment, software and systems used by the Concessionaire in the provision of the SELT Service.

**“Security Audit”** means a systematic examination of data, statements, records and performance of the stated security requirements.

**“Security Plan”** means the Concessionaire’s security plan prepared pursuant to paragraph 3 of Schedule 2.2 (Security).

**“Security Requirements”** means the Authority’s Requirements detailed in Schedule 2.2 (Security).

**“SELT”** means Secure English Language Testing.

**“SELT Mailbox”** means a dedicated email address through which the Concessionaire can contact the Authority regarding the SELT Service and from which the Authority will forward information to the Concessionaire.

**“SELT Provider”** means any provider of Secure English Language Testing services to the Authority, including the Concessionaire.

“**SELT Team**” means Authority staff responsible for assurance of the Concession and for managing the relationship with the Concessionaire.

“**Service Failure**” has the meaning given to it in Clause 21.2.

“**Service Failure Log**” means the hard copy and electronic version of the log of Service Failures, created and maintained by the Concessionaire as part of the Services in accordance with **Part D of Schedule 2.3** (Service Levels, Performance and Liquidated damages).

“**Service Level**” means the levels to which the Services must be performed as set out in Schedule 2.3 (Service Levels, Performance and Liquidated Damages).

“**Services**” means the services, including the Chargeable Services, to be provided by the Concessionaire under this Concession Agreement.

“**Service Termination Date**” means the date set out in a Termination Notice which specifies the effective date of termination of this Concession Agreement.

“**Standards**” means the standards, policies, guidelines and codes of practice set out in Schedule 2.1 (Authority’s Requirements).

“**Sub-contract**” means any agreement or proposed agreement, other than this Concession Agreement, which relates solely to the provision by any third party directly or indirectly of:

- a) any Deliverable (or part of a Deliverable);
- b) the SELT Services (or any part of the SELT Services);
- c) any facilities necessary for provision of the SELT Service (or any part of the SELT Service); or
- d) services necessary for the provision, management, direction or control of the SELT Service (or any part of the SELT Service); or
- e) in relation to any agreement or proposed agreement which relates to any of the things set out in (a) to (e) above (the “**Relevant Scope**”) and also to other matters, that part of the agreement or proposed agreement which deals solely with the Relevant Scope.

“**Sub-contractor**” means a third party other than the Concessionaire which enters into a Sub-contract which has been approved by the Authority in accordance with Schedule 4.1 (Sub-contractors).

“**Subject to Immigration Controls**” means a person who does not have an automatic right to reside and/or work in the United Kingdom.

“**Tender**” means the Concessionaire’s response to the Request for Proposal.

“**Term**” means the entire term of this Concession Agreement, including any agreed extensions.

“**Termination Notice**” means a notice in writing in accordance with Clauses 17, 35, 36, or 37 served by one party on the other to initiate the termination of all or part of the Agreement.

“**Termination Transfer Date**” means the date that the SELT Service is transferred from the Concessionaire to the Replacement Concessionaire or to the Authority and where the Services are transferred in parts, each date that any such part is transferred shall be a Termination Transfer Date in respect of that part and in relation to the Termination

Transferring Employees assigned to it.

**“Termination Transferring Employees”** means the Concessionaire Personnel assigned to provide the SELT Service, to be transferred on the Termination Transfer Date and whose names are included on the list provided by the Concessionaire in accordance with the terms of this Concession Agreement.

**“Test”** means an English language test provided by the Concessionaire under the terms of the Concession Agreement, which Candidates sit at Test Centres and **“Testing”** shall be construed accordingly.

**“Test Analysis”** means the processes undertaken by the Concessionaire to guarantee the integrity of Test results and to identify trends in results; proxy testing and/or any form of cheating or collusion.

**“Test Centre”** means a location within the Region where Candidates sit Tests.

**“Test Centre Network”** means all the locations in the UK and the Rest of the World, including permanent and Pop-Up Test Centres where the Concessionaire delivers the SELT Service.

**“Test Centre Personnel”** means all persons involved in the provision of the SELT Service whether its direct employees or otherwise (this could include but is not limited to test centre manager(s); director(s); individuals employed or contracted through a third party).

**“Third Party”** means any person who is not a Party to this Concession Agreement.

**“Tier 4”** means the description applied by the Authority to people coming to the UK to undertake a course of study at a UK educational establishment.

**“Training Plan”** means the plan for design, development and delivery of any training required for the implementation and operation of the SELT Service.

**“Training Programme”** means a programme of training provided by the Concessionaire for Concessionaire Personnel in relation to the SELT Service.

**“Transitional Period”** means the period in which Tests currently listed on the SELT list (Appendix O to the immigration rules) will remain eligible for use by visa applicants after go-live of the new SELT list.

**“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

**“UK Immigration Purposes”** means purposes related to any application to the Authority for Leave to Remain or to settle in the UK.

**‘UK Personnel’** means Concessionaire Personnel who work on the Concession within the UK.

**“UKV&I Licensed Sponsor”** means a UK based organisation or educational establishment that is licensed by the Authority to sponsor migrants to come to the UK to work or study.

**“VAC”** means a Visa Application Centre.

“**VAT**” means value added tax as provided for in the Value Added Tax Act 1994.

“**Working Day**” means:

- (a) in relation to the United Kingdom, any day other than: (i) a Saturday, a Sunday, Christmas Day, Good Friday; or (ii) a day which is a bank holiday in any part of the United Kingdom; and
- (b) in relation to the ROW, any day where depending on the custom or usage of the trade or jurisdiction, working is required for the purpose of delivering the Services.

“**Year**” shall mean 12 consecutive months.